



DEPARTMENT OF ENERGY

10 CFR Part 851

[EHSS-RM-20-WSHP]

RIN 1992-AA61

Worker Safety and Health Program

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and request for public comment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is proposing to amend its current worker safety and health program regulation. The proposed amendment would make corrections to the worker safety and health program regulation requirements related to beryllium and beryllium compounds for purposes of accuracy and consistency with DOE's Chronic Beryllium Disease Prevention Program regulation, and to clarify that DOE did not intend to adopt the 2016 American Conference of Governmental Industrial Hygienists threshold limit value for beryllium and beryllium compounds.

DATES: Written comments on this proposed rulemaking must be received by the Department on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Please refer to section IV (Public Participation – Submission of Comments) for additional information on the comment period.

ADDRESSES: You may submit comments identified by docket number EHSS-RM-20-WSHP and/or Regulation Identification Number (RIN) 1992-AA61, in one of two ways (please choose only one of the ways listed):

1. *Federal e-Rulemaking Portal:* www.regulations.gov. Follow the instructions in the portal for submitting comments.

2. *E-mail: Rulemaking.851@hq.doe.gov.* Include docket number EHSS-RM-20-WSHP and/or RIN 1992- AA61 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document.

Docket: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket web page can be found at: *www.energy.gov/ehss/worker-safety-and-health-program-10-cfr-851doe-o-4401b*. This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains instructions on how to access all documents, including public comments, in the docket. See section IV of this document for further information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop EHSS-11, 1000 Independence Ave., S.W., Washington, D.C. 20585, Telephone: 301-903-1165, or by E-mail at: *james.dillard@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

DOE incorporates by reference into part 851 the following publication:

American Conference of Governmental Industrial Hygienists (ACGIH®), *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* (2016), excluding beryllium and beryllium compounds.

A copy of this publication can be obtained from: ACGIH®, 1330 Kemper Meadow Drive, Cincinnati, OH 45240; telephone number 513-742-2020; or go to: <http://www.acgih.org>.

For a further discussion of this publication, see section III.M of this document.

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I. Authority and Background

A. Authority

DOE has broad authority to regulate worker safety and health with respect to its nuclear and nonnuclear functions pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*; the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801 *et seq.*; and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101 *et seq.* Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC) to protect health and promote safety during the performance of activities under the AEA. (*See* Sec. 31a.(5) of the AEA, 42 U.S.C. 2051(a)(5); Sec. 161b. of the AEA, 42 U.S.C. 2201(b); Sec. 161i.(3) of the AEA, 42 U.S.C. 2201(i)(3); and Sec. 161p. of the AEA, 42 U.S.C. 2201(p)). In addition, Congress amended the AEA in 2002 by adding section 234C, 42 U.S.C. 2282c, which, among other things, directed

DOE to “promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d) of” title 42 of the United States Code. In 1974, the ERA abolished the AEC and replaced it with the Nuclear Regulatory Commission (NRC), which became responsible for the licensing of commercial nuclear activities, and the Energy Research and Development Administration (ERDA), which became responsible for the other functions of the AEC under the AEA, as well as several nonnuclear functions. The ERA authorized ERDA to use the regulatory authority under the AEA to carry out its nuclear and nonnuclear functions, including those functions that might become vested in ERDA in the future. (*See* Sec. 105(a) of the ERA, 42 U.S.C. 5815(a); and Sec. 107 of the ERA, 42 U.S.C. 5817.) In 1977, the DOEEOA transferred the functions and authorities of ERDA to DOE. (*See* Sec. 301(a) of the DOEEOA, 42 U.S.C. 7151(a); Sec. 641 of the DOEEOA, 42 U.S.C. 7251; and Sec. 644 of the DOEEOA, 42 U.S.C. 7254).

B. Background.

On February 9, 2006, when DOE promulgated 10 CFR part 851, *Worker Safety and Health Program* (71 FR 6858), it adopted several industry standards and guidelines to establish the baseline industrial and construction safety and health requirements for DOE workplace operations. The standards and guidelines with which DOE contractors performing work on DOE sites were required to comply included certain Occupational Safety and Health Administration (OSHA) regulations and threshold limit values (TLVs®) published by the ACGIH®. Compliance with these standards and guidelines were already required by DOE Order 440.1A, *Worker Protection Management for DOE Federal and Contractor Employees*, which established a comprehensive worker protection program that provided the basic framework necessary for contractors to ensure the safety and health of their workforce. Title 10 CFR 851.23(a) requires DOE contractors to comply with 10 CFR part 850, *Chronic Beryllium Disease Prevention*

Program, and certain OSHA regulations at 29 CFR parts 1910, 1915, and 1926, among others. In 2015, DOE amended 10 CFR part 851 and added §851.2(d) to clarify DOE’s intent to adopt only OSHA’s permissible exposure limit for beryllium found in 29 CFR 1910.1000, and that the ancillary provisions (e.g., exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) of OSHA’s standard do not apply to DOE and DOE contractors and their employees (80 FR 69564, November 10, 2015).

On January 9, 2017, OSHA promulgated new regulations in 29 CFR parts 1910, 1915, and 1926 for the protection of workers from the effects of beryllium and beryllium compounds in the workplace (82 FR 2470). These new provisions had the potential to conflict with or overlap DOE’s beryllium safety and health requirements in 10 CFR part 850.

On December 18, 2017 (82 FR 59947), DOE issued a technical amendment to 10 CFR part 851 that replaced the existing references to safety and health standards and guidelines with the latest versions of the standards and guidelines. In the December 2017 amendment, DOE updated the safety and health standards and guidelines that were incorporated by reference in 10 CFR part 851, including the ACGIH® TLVs® in the “*Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*” (2016). The TLVs® included those for beryllium and beryllium compounds.

In this proposed rule, DOE is proposing to make corrections to 10 CFR part 851 with respect to the requirements for beryllium and beryllium compounds that would: (1) ensure accuracy and consistency with 10 CFR part 850, *Chronic Beryllium Disease Prevention Program*; (2) clarify that in adopting certain OSHA regulations and ACGIH® TLVs® in 10 CFR part 851, DOE did not intend to adopt OSHA’s ancillary beryllium safety requirements and ACGIH® values for beryllium and beryllium compounds; and (3) clarify in §851.2(d) that 10 CFR part 851 does not require compliance by DOE contractors with any OSHA requirements for beryllium or beryllium compounds except as provided in 10 CFR part 850. DOE believes these corrections are

necessary to avoid potential conflicts with DOE's beryllium safety and health requirements in 10 CFR part 850 and to avoid potential confusion among DOE contractors as to the requirements with which they must comply at DOE sites.

This proposed rule would also make minor corrections to clarify the meaning of §851.23(b) regarding contractor compliance with additional safety and health requirements that are necessary to protect workers at their covered workplace.

II. Discussion

Section 851.2(d) currently provides that part 851 does not require compliance with any OSHA beryllium requirement except for any permissible exposure limit for beryllium in 29 CFR 1910.1000. The proposed text in §851.2(d) would modify the current language by instead referring to DOE's beryllium rule and stating that part 851 does not require compliance with any OSHA requirements for beryllium and beryllium compounds except as provided in 10 CFR part 850, *Chronic Beryllium Disease Prevention Program*. DOE notes that 10 CFR 850.22, *Permissible exposure limit*, states that the responsible employer must assure that no worker is exposed to an airborne concentration of beryllium greater than the permissible exposure limit established in 29 CFR 1910.1000, as measured in the worker's breathing zone by personal monitoring, or a more stringent time weighted average permissible exposure limit that may be promulgated by OSHA as a health standard. The proposed change to §851.2(d) would ensure consistency between the language in 10 CFR parts 850 and 851 with respect to beryllium and beryllium compounds.

Section 851.23(a) currently requires contractors to comply with safety and health standards and guidelines that are applicable to the hazards at their covered workplace, including those identified at paragraphs (a)(3), (a)(4), and (a)(7) of that section. DOE's proposed changes in §851.23(a) would clarify that while DOE currently adopts OSHA's permissible exposure limit

for beryllium, it is not DOE's intention to adopt OSHA's remaining beryllium requirements in 29 CFR parts 1910, 1915, and 1926.

The current language in §851.23(a)(3) refers to 29 CFR part 1910, *Occupational Safety and Health Standards*, excluding 29 CFR 1910.1096, *Ionizing Radiation*, and 29 CFR 1910.1000, *Beryllium*. The proposed language in §851.23(a)(3) would correct the reference to OSHA's regulations and refer instead to 29 CFR part 1910, *Occupational Safety and Health Standards*, excluding 29 CFR 1910.1096, *Ionizing Radiation*; 29 CFR 1910.1000, *Air Contaminants*, Tables Z-1 and Z-2, as they relate to beryllium and beryllium compounds; and 29 CFR 1910.1024, *Beryllium*.

The current language in §851.23(a)(4) refers to 29 CFR part 1915, *Shipyards Employment*. The proposed language in §851.23(a)(4) would refer instead to 29 CFR part 1915, *Occupational Safety and Health Standards for Shipyard Employment*, except for 29 CFR 1915.1024, *Beryllium*. In addition, the current language in §851.23(a)(7) refers to 29 CFR part 1926, *Safety and Health Regulations for Construction*. The proposed language in §851.23(a)(7) would refer instead to 29 CFR part 1926, *Safety and Health Regulations for Construction*, except for 29 CFR 1926.1124, *Beryllium*.

In 2017, DOE adopted and incorporated by reference the ACGIH® *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016), but did not intend to adopt the ACGIH® TLV® for beryllium and beryllium compounds. This proposed rule would amend §851.23(a)(9) to exclude the ACGIH® TLV® for beryllium and beryllium compounds. In addition, §851.23(a)(9) currently only refers to two of OSHA's health standards for beryllium and beryllium compounds, 29 CFR part 1910 (general industry) and 29 CFR part 1926 (construction). The proposed language in §851.23(a)(9) would also include references to 29 CFR part 1915, the OSHA standard for shipyards.

In this proposed rule, DOE is also proposing minor editorial changes that would clarify the Department's intent with respect to §851.23(b). Currently, §851.23(b) states that nothing in this

part must be construed as relieving a contractor from complying with any additional specific safety and health requirement that it determines to be necessary to protect the safety and health of workers. The proposed amendment to §851.23(b) would state that nothing in this part relieves contractors from the responsibility to comply with any additional safety and health requirements that are necessary to protect the safety and health of workers.

In addition to the proposed amendment to §851.23(a)(9) to exclude the ACGIH® TLV® for beryllium and beryllium compounds, this proposed rule would also clarify DOE's intent in §851.27(b)(1) that the incorporation by reference of ACGIH®, *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, 2016, excludes beryllium and beryllium compounds.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This regulatory action has been determined not to be “a significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered

during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (<https://energy.gov/gc/office-general-counsel>).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth below.

This proposed rule would update DOE's worker safety and health program regulation and clarify DOE's ongoing intent to exempt DOE contractors from specified OSHA regulations and the ACGIH® TLV® pertaining to beryllium and beryllium compounds. This proposed rule would apply only to activities conducted by DOE's contractors who would be responsible for implementing the rule requirements. DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because work performed at DOE sites is under contracts with DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts for the costs of complying with worker safety and health program requirements. Therefore, they would not be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This proposed rule does not impose a collection of information requirement subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this proposed action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR

part 1021). DOE's regulations include a categorical exclusion (CX) for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE has determined that this proposed rule is covered under the CX found in DOE's NEPA regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, because it is an amendment to an existing regulation that does not change the environmental effect of the amended regulation and, therefore, meets the requirements for the application of this CX. *See* 10 CFR 1021.410.

Therefore, DOE has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for the affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive

Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 9, 2000) on “Consultation and Coordination with Indian Tribal Governments,” DOE may not issue a discretionary rule that has “Tribal” implications and imposes substantial direct compliance costs on Indian Tribal

governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104-4, sec. 201 *et seq.* (codified at 2 U.S.C. 1531 *et seq.*)). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant Federal intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: <https://www.energy.gov/gc/guidance-opinions> under “Guidance & Opinions” (Rulemaking)). DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, which is part of OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being (5 U.S.C. 601, note). This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M-19-15, *Improving Implementation of the Information Quality Act* (April 24, 2019), DOE published updated guidelines which are available at:

www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.

DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

M. Materials Incorporated by Reference

DOE is proposing to restrict the TLVs[®] for chemical substances and physical agents and biological exposure indices (BEIs[®]) published by the ACGIH[®] titled *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016), the currently-approved for incorporation by reference, by excluding beryllium and beryllium compounds. The TLVs[®] and BEIs[®] are guidelines that are intended for use by industrial hygienists in making decisions regarding safe levels of exposure to various chemical and physical agents found in the workplace. Each year ACGIH[®] publishes its TLVs[®] and BEIs[®]. Copies of the ACGIH[®] TLVs[®] and BEIs[®] are available on ACGIH[®]'s website at: www.acgih.org.

IV. Public Participation – Submission of Comments

DOE will accept comments, data and information regarding this proposed rule before or no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule using the method described in the **ADDRESSES** section at the beginning of this proposed rule. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s), *e.g.*, §851.2(d), to which they refer where possible.

1. *Submitting comments to www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable by DOE's Office of Worker Safety and Health Policy staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment cannot be processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

2. Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments. Include contact information each time you submit comments, data, documents, and other information to DOE.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. Confidential Business Information. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: one copy of the document marked “CONFIDENTIAL” including all the information believed to be confidential, and one copy of

the document marked “NON-CONFIDENTIAL” with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination as to the confidentiality of the information and treat it according to its determination.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters*. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

V. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 851

Civil penalty, Incorporation by reference, Occupational safety and health, Reporting and recordkeeping requirements, Safety.

Signing Authority

This document of the Department of Energy was signed on August 20, 2022, by Jennifer Granholm, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on August 25, 2022.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

For the reasons set forth in the preamble, the Department of Energy proposes to amend part 851 of chapter III of title 10 of the Code of Federal Regulations as set forth below:

PART 851—WORKER SAFETY AND HEALTH PROGRAM

1. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

2. Amend §851.2 by revising paragraph (d) to read as follows:

§851.2 Exclusions.

* * * * *

(d) This part does not require compliance with any Occupational Safety and Health Administration requirements for beryllium or beryllium compounds except as provided in 10 CFR part 850, “Chronic Beryllium Disease Prevention Program.”

* * * * *

3. Amend §851.23 by revising paragraphs (a)(3), (4), (7), (9) and (b) to read as follows:

§851.23 Safety and health standards.

(a) * * *

(3) Title 29 CFR, Part 1910, “Occupational Safety and Health Standards,” excluding 29 CFR 1910.1096, “Ionizing Radiation”; 29 CFR 1910.1000, “Air Contaminants,” Tables Z-1 and Z-2, as they relate to beryllium and beryllium compounds; and 29 CFR 1910.1024, “Beryllium.”

(4) Title 29 CFR, Part 1915, “Occupational Safety and Health Standards for Shipyard Employment,” except for 29 CFR 1915.1024, “Beryllium.”

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(7) Title 29 CFR, Part 1926, “Safety and Health Regulations for Construction,” except for 29 CFR 1926.1124, “Beryllium.”

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(9) American Conference of Governmental Industrial Hygienists (ACGIH®), *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016) (incorporated by reference, see §851.27), excluding those for beryllium and beryllium compounds, when the ACGIH® Threshold Limit Values (TLVs®) are lower (more protective) than permissible exposure limits in 29 CFR part 1910 for general industry, 29 CFR part 1915 for shipyards, and/or 29 CFR part 1926 for construction. When the ACGIH® TLVs® are used as exposure limits, contractors must comply with the other provisions of any applicable expanded health standard found in 29 CFR parts 1910, 1915, and 1926.

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(b) Nothing in this part relieves contractors from the responsibility to comply with any additional safety and health requirements that are necessary to protect the safety and health of workers.

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4. Amend §851.27 by revising paragraph (a) to read as follows:

§851.27 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at the DOE and at the National Archives and Records Administration (NARA). Contact DOE at the: U.S. Department of Energy, Office of Environment, Health, Safety and Security, Office of Worker Safety and Health Policy, 1000 Independence Ave. SW., Washington, DC 20585, (301) 903–1165. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. The material may be obtained from the sources in the following paragraphs of this section.

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